



City of Rockville

## MEMORANDUM

May 28, 2010

TO: Planning Commission

FROM: Margaret M. Hall, Planner II *MMH*

VIA: Jim Wasilak, Chief of Planning *JW*  
Bobby Ray, Principal Planner *BR*

SUBJECT: Time Extension, Use Permit Amendment Application USA1983-0279F,  
Corporate Office Properties Trust, 15 West Gude Drive

A Time Extension Application (Attachment A) has been filed for Use Permit Amendment Application USA1983-0279F. Use Permit Amendment USA1983-0279F allowed for the reconfiguration of the previously approved site plan for the two approved office buildings, the shifting of the building footprints and the placement of a parking deck at 15 West Gude Drive.

The project has a long history that includes the initial build-out of two of the four office buildings approved for the site in 1983. At the time the project was approved, there was no build-out time limitation. When Corporate Office Properties Trust (COPT) acquired the property, they purchased the property with the understanding that they could complete the final two buildings. However, since 1983, there had been an eight-year limitation placed on the implementation of phased projects, and based on the building permit submitted, staff concluded that they could not complete the project without reapplying for Use Permit Amendment approval. A determination that the eight-year build-out limitation applied was appealed to the Board of Appeals for determination. At their meeting on June 14, 2007, the Board concluded that the original approval remained in effect without a time limitation on the implementation of the original Use Permit and directed staff and the applicant to develop a solution that addressed the issues, including compliance with the Forest and Tree Preservation Ordinance that had been enacted since the original approval. (See Attachment B.) In order to preserve as much as possible of the forest on the property, the Use Permit Amendment that is the subject of this Time Extension request was filed to shift the building footprints as well as propose a parking deck to accommodate the required parking. The Use Permit Amendment was approved by the Planning Commission on April 9, 2008, with the decision letter being issued on June 13, 2008. (See Attachment C.) This Use Permit Amendment approval is now the subject of this Time Extension request.

May 28, 2010

Section 25.08.02.b.1 of the Zoning Ordinance requires that construction under a Use Permit approved prior to March 16, 2009 must commence within two years of the approval letter of the Planning Commission or the Use Permit will expire. Section 25.08.02.b.2 requires that all phases of a multi-phase project for which a Use Permit application has been approved as of March 16, 2009 must be commenced within eight (8) years from the date of the approval letter or the Use Permit will expire. A total of two extensions of one year each may be granted by the Planning Commission for good cause shown. Approval of this time extension would extend the validity period to commence construction to June 13, 2011, with one further extension possible.

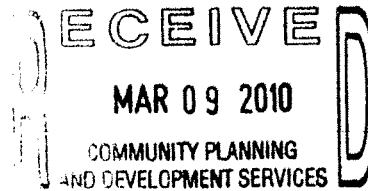
Attachments

Attachment A	Application for Time Extension
Attachment B	Board of Appeals Opinion and Order
Attachment C	Approval Letter for USA1983-0279F



Application for

# Time Extension


**EXT**  
2/09

## City of Rockville

*Department of Community Planning and Development Services*

111 Maryland Avenue, Rockville, Maryland 20850

Phone: 240-314-8200 • Fax: 240-314-8210 • E-mail: Cpds@rockvillemd.gov • Web site: www.rockvillemd.gov

**Please Print Clearly or Type**

Property Address Information 15 & 45 West Gude Drive Rockville, MD 20850Property Name Rockville Corporate CenterProject Description Four Building Commercial Office Building CampusSUBDIVISION Vitro Add. College Gardens Lot (S) 1 Block RZoning I-3 Tax Account (S) 04-02509363 , 04-032228277 ,
**Applicant Information:**
*Please supply Name, Address, Phone Number and E-mail Address*

 Applicant Sean Moore, Rockville Corporate Center, LLC c/o Corporate Office Properties Trust, 6711 Columbia Gateway  
Drive, Suite 300, Columbia, MD 21046

 Property Owner Rockville Corporate Center, LLC c/o Corporate Office Properties Trust, 6711 Columbia Gateway  
Drive, Suite 300, Columbia, MD 21046
Architect Jef Fuller, DNC Architects, 1370 Piccard Dr., Ste 100, Rockville, MD 20850Engineer Kevin Johnson, Johnson Bernat Associates, 1395 Piccard Dr., Ste 350, Rockville, MD 20850Attorney Scott Wallace, Linowes & Blocher, LLP, 7200 Wisconsin Ave, Ste 800, Bethesda, MD 20814
**STAFF USE ONLY**
**Application Acceptance:**
Application # USA1983-0279F

Pre-Application \_\_\_\_\_

Date Accepted \_\_\_\_\_

Staff Contact \_\_\_\_\_

OR

**Application Intake:**
Date Received 3/9/2010

Reviewed by \_\_\_\_\_

Date of Checklist Review \_\_\_\_\_

Deemed Complete: Yes ☐ No ☐

ORIGINAL APPLICATION NUMBER USA1983-0279F

ORIGINAL APPLICATION APPROVAL DATE 4 / 9 / 2008

DATE OF ANY PREVIOUS TIME EXTENSIONS GRANTED (IF ANY) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

A TIME EXTENSION IS NECESSARY FOR THE FOLLOWING REASON (S) Real Estate Market Conditions

***A letter of authorization from the owner must be submitted if this application is filed by anyone other than the owner.***

I hereby certify that I have the authority to make this application, that the application is complete and correct and that I have read and understood all procedures for filing this application.

Please sign here: \_\_\_\_\_

*Sean Moore*

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**Application Checklist:**

☒ Complete Application

☒ Filing Fee

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**Comments on Submittal: (For Staff Use Only)**

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**EXT**

CITY OF ROCKVILLE  
111 MARYLAND AVE  
ROCKVILLE, MD 20850

TERMINAL ID: 005225040  
MERCHANT #: 025188783880

USA  
XXXXXXXXXXXXXXXX5993  
SALE  
BATCH: 000562 INVOICE: 062290  
DATE: MAR 09, 10 TIME: 08:50  
SQ: 002 AUTH NO: 145399

TOTAL \$300.00

CUSTOMER COPY

April 2, 2010

City of Rockville  
Department of Community Planning and Development Services  
111 Maryland Avenue  
Rockville, MD 20850

**RE: One-year time extension for Use Permit, USA1983-0279F**

COPT Development and Construction Services (CDCS) and Rockville Corporate Center, LLC (RCC) request a one-year time extension for Use Permit, USA1983-0279F, as outlined in the Rockville Municipal Code. USA1983-0279F was approved 6/13/2008 and set to expire on 6/13/2010 unless construction starts. While COPT and RCC have worked diligently with City staff over the past two years to finalize and approve engineering plans and finalize forest conservation issues, we will not be prepared to pull permits and start construction before the initial two year term of our Use Permit expires. Poor market conditions caused by economic conditions and the recent recession are the reason for this request.

The recession suppressed the demand for new office space in 2009 and into 2010. While the economy has started to show signs of improvement, job creation and demand for commercial real estate, both lagging indicators, have remained sluggish. The project is situated in Montgomery County's North Rockville submarket which experienced significant development in the previous economic expansion. The submarket ended 2009 with a 16% vacancy rate, which equates to 1.9 million SF of available space. Total submarket absorption for 2009 was 110,000 SF. The lack of strong tenant demand and glut of available space create market conditions that are not conducive to starting the project at this time.

In the event that State or City legislation extends the validity period for the original approval, we request that a condition to granting this time extension be included to reserve the right to apply for two (2) one-year time extensions at the end of any new validity period.

Sincerely,



Sean R. Moore  
Development Project Manager

BEFORE THE BOARD OF APPEALS  
OF THE CITY OF ROCKVILLE

IN THE MATTER OF THE	*	
ADMINISTRATIVE APPEAL		
OF ROCKVILLE CORPORATE CENTER, LLC	*	
FOR ADMINISTRATIVE REVIEW OF		
(1) DETERMINATIONS OF CITY MANAGER	*	
REGARDING BUILDING PERMIT BLD		
2007-13010 BY LETTER DATED	*	Administrative Appeal
JANUARY 2, 2007;		
(2) DENIAL OF FOREST CONSERVATION	*	Case No. APP2007-00876
PLAN FTP 2005-99925 BY MEMORANDUM		
OF ASSISTANT CITY FORESTER DATED	*	
FEBRUARY 26, 2007; AND		
(3) DENIAL OF BLD 2007-13010 BY LETTER	*	
DATED APRIL 5, 2007 FROM CITY CHIEF		
OF INSPECTION SERVICES	*	

OPINION AND ORDER

I. Procedural Background

This matter comes before the Rockville Board of Appeals upon the application for administrative review filed by Rockville Corporate Center, LLC, ("RCC") also known as and referred to in the record as "COPT". The appeal was first noted by RCC concerning a letter dated January 2, 2007 from City Manager Ullery regarding non-issuance of Building Permit BLD2007-13010. Thereafter, RCC noted an appeal of the denial of Forest Conservation Plan FTP 2005-99925, via a memorandum dated February 26, 2007 from the Assistant City Forester, and a denial of BLD 2007-13010 via letter dated April 5, 2007 from the City Chief of Inspection Services. These appeals were timely filed.

RCC filed the application for review on the basis that:

- A. Use Permit U-279-83 continues to be valid,
- B. it has acquired a vested right to construct two additional buildings pursuant to this Use Permit,
- C. it has acquired vested contractual rights to construct the buildings that cannot be abrogated by subsequently enacted laws,
- D. due to RCC's reliance on assurances from the City, the City is equitably estopped from preventing construction of the two buildings through subsequently enacted laws,
- E. any refusal to allow RCC to construct the compact car spaces is unlawful,
- F. any City requirement that RCC preserve certain trees that had previously been approved for clearing is contrary to law and not supported by the record, and

- G. that any denial of the building permit on the basis of a minor deviation from the footprint of Building C as set out in the Site Development Plan is based on an error of fact and contrary to City practice

Any such denial of the building permit is also claimed to result in a taking of RCC's property rights. RCC requested that the Board order the City to approve the Building Permit Application for Building C and related parking and the Forest Conservation Plan, subject to reasonable and customary conditions.

The City responded that:

- A. Use Permit U-279-83 has expired,
- B. RCC has no vested and/or contractual rights in the two buildings not yet constructed,
- C. the City is not estopped from applying subsequently enacted laws to the construction of the buildings,
- D. subsequently enacted laws concerning parking spaces and forest conservation apply to the use permit,
- E. no taking has occurred, and
- F. it is not within the power of the Board of Appeals to grant this building permit, based upon the stage of review.

A hearing date of June 2, 2007 was set. After meeting in closed executive session to consult with appointed counsel, the Board of Appeals, with Roy Deitchman and Steven Schwartzman present, and Mr. Deitchman acting as chair, began the hearing. RCC and the City of Rockville ("the City") appeared with counsel. Comments were also received from members of the public who wished to speak on the matter.

Mr. Deitchman indicated that he was a resident of King Farm, an adjacent residential/commercial community, but did not feel that this fact would affect his ability to fully and fairly hear the case, and requested whether there was any objection to his participation in deciding the case. No objection was raised.

A Motion to Dismiss had been filed by the City, through its counsel. That portion of the motion concerning whether a final decision had been appealed from was withdrawn as moot. The Board heard as a preliminary matter the remaining allegations of the Motion to Dismiss. This motion was denied.

At the hearing, RCC presented testimony through the following persons: Jef Fuller, Dwight Taylor, and Kevin Johnson (all of whom qualified as an expert), and Sean Moore.

Various members of the King Farm community, including Randy Merriman, Linda Moulton, Brian Pierce, Diane Browne and Paulo Eribe, testified against the RCC appeal.

The City presented testimony through Charles Baker, Wayne Noll, Elise Cary, R. James Wasilak and Margaret Hall (all of whom qualified as an expert).



Various exhibits were referred to in the parties' pre-hearing submissions, and were admitted into evidence at the beginning of the hearing without objection. These exhibits are listed in Attachment A. Additional exhibits, referred to as Hearing Exhibits 1 through 19, were entered into evidence during the hearing. The Hearing Exhibits accepted into evidence at the hearing are listed in Attachment B.

After a full day hearing, the evidentiary record was closed and the matter was continued to June 14, 2007, to allow opposing counsel to file written closing arguments. The Board reconvened on June 14 and rendered its decision after hearing argument of counsel, voting unanimously to direct staff to prepare this written decision.

Based upon the evidence presented at the hearing both by testimony and documentary evidence, the Board of Appeals makes the following findings of fact and conclusions of law.

## II. Standard of Review

The Board's review of this case is *de novo*. During the hearing, we received into evidence the pre-hearing statements of the parties, together with associated exhibits, heard the evidence of all who were called or wished to testify, and accepted additional hearing exhibits. Our decision is based on the entirety of this evidence.

## III. Findings of Fact

In 1983, Vitro Laboratories ("Vitro") planned the development of a 24.5 acre property ("Property"), located at the intersection of West Gude Drive and MD355 in the City, as an office and research complex. The plan was to construct 440,000 square feet in four buildings which would share surface parking. On October 12, 1983, the Rockville Planning Commission issued a use permit for development of the four buildings on the Property, subject to conditions. The Property is adjacent to the King Farm, which in 1983 was used for agricultural purposes, and is now the site of a large residential/commercial community. A significant number of mature trees are now located on the Property, adjacent to the King Farm community.

Between 1983 and 1985, the Property ownership changed. During that time, Vitro or its successor granted stormwater management rights of way to the City, entered into Public Improvements Agreements with the City pursuant to the Use Permit conditions requiring the owner to pay for one-half of the cost of a traffic signal, and to pay a special assessment estimated at \$280,000 for improvements along the frontage of the Property, and granted a 10 foot public utility easement along West Gude Drive and MD 355. In 1986, the owner, also in compliance with Use Permit conditions, conveyed approximately .347 acres along MD 355 to the State of Maryland.

In 1985, the Rockville Planning Commission approved a Site Development Plan for the Property, which shows the general location and footprints of four buildings,

labeled A,B,C, and D, and the surface parking. The surface parking included some compact spaces, which was allowed under the law at that time. Also in 1985, the owner created one record lot for the Property, identified as "Lot 1, Block R ", and building permits were issued for the construction of Buildings A and B (15 and 45 West Gude Drive, respectively) plus a portion of the surface parking. These buildings were constructed and completed in conformance with the Site Development Plan.

In 1992, the City adopted Chapter 10.5 of the City Code, "Forest and Tree Preservation". This law, as amended, requires forest and tree preservation, or mitigation for the loss of them, with the payment of a fee in lieu allowed only after the applicant demonstrates to the satisfaction of the City Forester that reforestation or afforestation on-site or off-site cannot be accomplished. This law has specific requirements for significant trees including specific measures for management and preservation. The parties agree that this law applies to current development on the Property. The City also amended Section 25-411 of the City Code to delete an allowance for compact parking spaces.

In March, 2005, RCC entered into a contract to purchase the Property for \$43,845,247.00. The purchase price was based on the value of the existing improvements (\$37,612,286.00) and the value of the not yet constructed Buildings C and D plus parking on the unimproved portion of the Property (\$6,232,961.00). As part of its due diligence before completing purchase, RCC and its title company requested certain information from the City. The response to this request, dated March 22, 2005, from Scott Parker, Acting Chief of Planning, confirms the I-3 zone and the existence of Use Permit U-279-83 for the Property, recognizes that only two of the four buildings have been constructed as of that time, and states "the zoning approvals of the additional two buildings remain in effect" and that "(A)ll the remaining land of record Lot 1 . . . is subject to approved Use Permit U-279-83". Satisfied with this response, on April 7, 2005, RCC completed the purchase of the Property. It is clear from the testimony in the case that, while RCC knew it would be required to comply with laws adopted after 1983, it relied upon the information in the March 22, 2005 letter that the use permit was still in effect when proceeding with the purchase of the Property

Between August, 2005 and the end of 2006, RCC and City staff met repeatedly to discuss development of the Property. As discussions progressed, RCC and City staff continued to assume the validity of the Use Permit for the construction of Buildings C and D. Several issues, in addition to the required Forest Conservation Plan, were identified. Due to other changes in the law, the compact spaces originally approved for the Property were no longer allowed, and certain stormwater management changes would have to be made. Staff also reiterated that the footprints for Buildings C and D must be the same as set out in the Use Permit.

Beginning in January, 2006, RCC met with residents of King Farm to discuss the further development of the Property. Opposition to the development was based primarily on the potential loss of trees and the tree buffer between King Farm and the Property, and residents expressed their opposition to the Mayor and City Council at two Citizen's Forums (March 6 and August 7, 2006). In an effort to allay concerns, RCC met with staff

to discuss potential changes to the Use Permit (reduction in number of parking spaces, increase in parking setback along northern Property line). It was determined that such changes would require an amendment to the Use Permit, and on June 16, 2006, RCC filed such a request, which was scheduled to be heard by the Planning Board in September, 2006. Margaret Hall, City Planner, testified that use permit amendments generally require 6 to 8 weeks. On August 7, 2006, the Mayor and Council of Rockville voted to direct Planning Department staff to remove the use amendment request from the Planning Commission's agenda. The hearing has not been held and is not on the Planning Commission's agenda.

City staff and RCC continued to meet during the last half of 2006. In September, 2006, RCC agreed to study the feasibility of structured parking on the Property, in order to save more trees on its northern boundary. In October, 2006, RCC presented "Scheme B" to the City Manager, which included a plan to allow for more forested buffer on the northern edge. The City requested more information as to this plan. On November 9, 2006, RCC submitted a memorandum setting out various development options that it had explored, together with its financial analysis, which stated that structured parking was not economically feasible for the project, to the City Manager (Exhibit 26 to RCC's Pre-Hearing Statement).

On November 20, 2006, RCC filed a building permit application for Building C, designated as BLD2007-13010. On January 12, 2007, RCC filed a Forest Conservation Plan (Exhibit 28 to RCC's Pre-Hearing Statement). The permit application was based on the 1983 use permit, and did not include any changes proposed as part of the application to amend the use permit, any reduction in the compact car spaces, or any of the other options discussed with City staff for maximization of the tree save.

On January 2, 2007, City Manager Ullery issued a letter to RCC stating that the building permit application could not be approved for a number of reasons. (Exhibit 7 to RCC's Pre-Hearing Statement). The letter cites a number of problems with the application, in particular that the building footprint proposed does not match the footprint shown on the approved site plan, compact parking spaces can no longer be used, and that the City Forester had determined that reasonable efforts had not been made to protect the trees as required by law, and so off site mitigation would not be allowed. The letter also rejected "Scheme B" as requiring concessions from the City which could not be given. Testimony at the hearing established that a letter purporting to deny a building permit, under City procedures, would be issued by the City's Chief of Inspection Services, not the City Manager.

On February 26, 2007, Assistant City Forester Elise Cary issued a memorandum denying Forest Conservation Plan FTP 2005-00025 (Exhibit 8 to RCC's Pre-Hearing Statement). During her testimony, Ms. Cary identified Hearing Exhibits 8A (approved NRI/FSD for the Property), 8B (a listing of the significant trees on the Property) and 8C (Forest Stand Delineation Field Investigation Narrative by CNN, an RCC consultant), which was an update of the plan. She stated that there were two priority retention areas on the Property and numerous significant trees. Pursuant to City law, these areas must be

left undisturbed unless the City Forester determines that reasonable efforts have been made to preserve the forest and the site plan cannot reasonably be altered to protect the trees. On-site and off-site mitigation, and fees in lieu, can only be allowed if this is shown.

The FCP submitted showed a significant reforestation requirement of 3.9 acres. Ms. Cary described the process as one of back and forth negotiation generally, which can include economic circumstances on the property, to determine the best option, and stated that this had not occurred between her office and RCC. She indicated that she was aware of "Scheme B" and the possible amendment of the use permit, and thought that these had some promise, but only had RCC's statement that structured parking was too costly without any supporting documentation. It was unclear to her why other properties in the area used at least some structured parking but this site could not. She indicated that, although supporting documentation may have been provided to other City staff, it had not been given to her. Finally, she stated that she had been taken off guard by the filing of the FCP in January, 2007, as she thought further discussion was to have occurred with RCC before the filing.

The City Engineer approved RCC's stormwater management plan with conditions on March 16, 2007, specifically referring to the use permit and proposed amendments.

On April 5, 2007, the City's Chief of Inspection Services issued a letter denying the building permit application. This letter incorporated by reference a letter also dated April 5, from the Chief of Planning, noting four issues as the basis for the denial. These included the fact that the footprints of the buildings did not match those previously approved, the inclusion of compact parking spaces, lack of an approved FCP and that the use permit had expired due to a 2004 amendment to the law.

Testimony was received from Jef Fuller, an architect, as to the building footprint issue. Mr. Fuller testified that the plans prepared substantially comply with the use permit issued in 1983. The original plans were hand drawn 25 years ago, blueprints were photo-reduced for storage and then photo-enlarged to be restored.. Two types of data were used to properly restore the drawings, graphic data (what something looks like) and dimensions data (actual measurement). He used dimensions data over graphic data as the more exact. He demonstrated the differences on Hearing Exhibit 4, showing that even the Property lines don't match exactly, and stated that this was more a result of reconstituting the plans with current technology than any change in footprint. Finally, he stated that length, width and site placement are the same, the only actual difference is the size of the notches at the corners of the buildings. No square footage was gained from this change.

Margaret Hall, City planner, stated she superimposed the footprints of Buildings C and D from the use permit with current plans, they did not match exactly, and so were rejected.

### III. Conclusions of Law

A. Use Permit U-279-83 is valid for the Property.

The City argues that Zoning Text Amendment No. TXT2004-00207, enacted by the Mayor and Council on August 25, 2004 as Ordinance No. 28-04, and amending Section 25-193 of the Zoning Ordinance, makes this use permit void, as construction on Buildings C & D did not commence within eight years of issuance of the permit. We do not agree with this interpretation of the 2004 amendment.

The 2004 amendment to Section 25-193 added the words “a use permit shall become void for those buildings within a multiple building development for which construction has not commenced with eight (8) years from the date of issuance of the use permit” to the section. RCC has argued that, based upon the legislative history, it is clear that this wording was not intended to apply retrospectively, and in particular, was not intended to apply to invalidate the use permit in this case. In its Motion to Dismiss and Closing Argument, the City argues that this amendment clearly states the intention of the law without ambiguity, and so its meaning cannot be altered by reference to the intent of the Rockville City Council at time of adoption. However, there is one “ambiguity” that must be resolved, which is whether the law was intended to be prospective only, or to apply to properties for which a use permit has already been issued, such as the Property in question.

It is clear from the record that Ordinance No. 15-93 was the first occasion in Rockville on which a limitation was placed on the timing of completion of multi-building development under the same use permit. With Ordinance No. 15-93, a Text Amendment was adopted by the Mayor and Council, allowing the granting of the permit to be conditioned on a time limitation, and instituting an eight year cap for all development under the permit. The ordinance is silent as to whether the cap applies to existing permits. However, the letter of Larry Owens, then Chief of Planning, and the Transcript of Proceedings for the public hearing on this amendment (Exhibit 31 and 32, RCC’s Pre-Hearing Statement respectively) make it clear that the amendment was assumed to apply prospectively only. This interpretation is concurred in by the City in its Motion to Dismiss.

The second amendment of interest occurred via Ordinance No. 28-04, through which another Text Amendment was adopted. This amendment created a new section (e), moved the eight year cap into from Section 25-193(b) to a new sub-section (e), and enacted an exception to the eight year rule, under certain circumstances, for projects within the Town Center Zones and the Twinbrook Metro Performance District. The City has argued in its Motion to Dismiss that this amendment, as opposed to that in 1993, did apply the eight year limitation for completion retroactively, and that it should apply to the instant use permit. The basis for this argument is that the 1993 amendment made the eight year limitation part of a condition that the Planning Board would impose, and that the 2004 amendment made the eight year limit an absolute bar, with some exceptions. We do not agree.

Prior to amendment in 2004, the 8 year cap limitation followed a sentence that allowed a time condition to be imposed on the implementation of all phases of a multi-building use. As noted, the eight year limitation language was moved, through the 2004 amendment, from subsection (b) to (e). At the same time, the language allowing a limitation on the time for implementing all phases of a multiple building development use permit as a condition was deleted entirely. While we grant that a time limitation for implementing all phases of a project is no longer a condition that may be imposed under subsection 125-193(b), this does not mean that the mere movement of the eight year limitation to another section made its application any different. This time limitation was always meant to provide an absolute cap on time. This interpretation is fully supported by the legislative history for the amendment, which clearly was aimed at resolving an issue concerning certain developments, which had received permits after 1993, that were encountering difficulty in completing their projects within the eight year period. There is no discussion of retroactively applying the cap to permits not already covered.

This interpretation is in keeping with case law. The general rule as to retroactive application of a law is reflected in *Washington Suburban Sanitary Commission v. Riverdale Heights Volunteer Fire Co. Inc.*, 308 Md. 556, 560-61, 520 A.2d 1319 (1987) which stated that statutes are presumed to operate prospectively and are construed accordingly unless otherwise indicated. The City has cited to *Layton v. Howard County Board of Appeals*, No. 116, September Term, 2006 (Md. App. 5/9/2007) (Md. App., 2007) and *Yorkdale Corporation v. Powell*, 237 Md. 121, 205 A.2d 269 (1964) for the proposition that the application should be retrospective in the present case. However, both cases, though creating an exception to the general rule, concern changes in the law that occurred during the course of litigation. That is not the case here, where the changes in the law occurred in 2004, well before RCC's purchase of the Property. As a result, the general rule should apply, the amendments should be applied only prospectively, and RCC's use permit is valid.

B. The proposed footprint for Building C substantially meets the requirements of Use Permit U-279-83

The testimony supports the finding that any differences between the footprint currently proposed for Building C and that proposed at the time of the issuance of the use permit are primarily the result of differences in technology for reproduction of drawings. The only real difference is in the notches at the corners of the buildings, which do not provide any change in square footage and do not violate the use permit.

C. The Board of Appeals is unable to order the issuance of the building permit.

RCC has requested that this Board require the issuance of the building permit and the approval of the Forest Conservation Plan. Pursuant to Article 66B §4.07(h) (2) of the Maryland Code, this Board has "all the powers of the administrative officer from whom the appeal is taken". Therefore, if the progress of the permit were such that we felt that it

should issue, we are empowered issue an order to that effect. Based upon the progress of the permit and FCP to date, we cannot issue such an order.

The City's Inspection Services Division was unable to further process the building permit due to denials from the Planning Department and Forestry. The Planning Department denial was based upon non-compliance with the footprint and failure to have a valid use permit, both of which we have decided are incorrect bases for denial, and failure to remove the compact car spaces to comply with current law. The Forestry denial is based upon the lack of an approved Forest Conservation Plan.

The issue of the compact car spaces has not been resolved. RCC argues that this law, adopted in 1993 after the use permit was issued, cannot apply to the current building permit request, as this is a retroactive application of the law. We do not agree. RCC is not required to retrofit already existing spaces, but to build the new spaces to conform to the current specifications.

Based upon the testimony, the final FCP is routinely a matter of negotiation, in part due to the requirements of the law. Specifically, the fee in lieu proposed by RCC can be authorized under Section 10.5-24 of the City Code only if RCC "demonstrates to the satisfaction of the City Forester that reforestation or afforestation on-site or off-site cannot be accomplished . . ." While RCC has claimed that use of structured parking is not economically feasible for this site, this information was not accompanied by supporting information or comparative economic analysis to other commercial sites in the area supplied to the City Forester, and several questions that the Assistant City Forester has have not been answered. In her view, the process had not been completed, and so the memo dated February 26, 2007 was issued. This memo also refers to additional information that is required for approval.

In addition to the issues listed above, the remainder of the building permit review process had not been completed. Construction plans have not been reviewed by Inspection Services. The Board is unable and unwilling at this stage to substitute its judgment for the Inspection Services Division as to whether construction plans should be approved.

#### D. Denial of vested rights

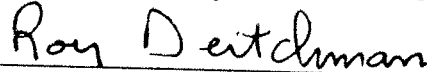
As a result of the foregoing, we are not required to reach the questions of whether RCC has acquired any vested rights.

#### ORDER

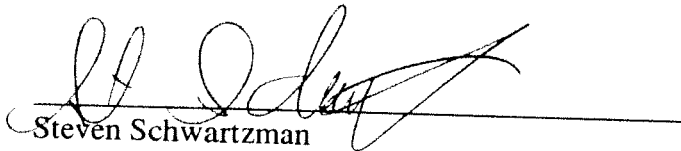
Pursuant to §4.07, we are denying RCC's request to issue the building permit, and are remanding this case to the Inspection Services Division for further proceedings in as expeditious and timely a manner as possible. In doing so, we direct that both parties pursue the evaluation of the application for the building permit in good faith, and in particular the FCP approval process, which has not been completed. We find the January

2, 2007 letter of City Manager Ullery stopping the FCP process, indicating that no fee in lieu will be allowed, and making various other decisions, as overreaching. RCC should have the full opportunity to provide sufficient information for the City Forester to make the required review of the FCP to determine what mitigation, including fee in lieu, should be allowed. In making this determination, the cost of construction, along with other criteria, must be considered. The building permit process should be allowed to function as it is designed, so that acceptable alternatives may be presented, evaluated and implemented.

The foregoing opinion and order is hereby adopted by the Board of Appeals this 10<sup>th</sup> day of August, 2007 by Board members Roy Deitchman and Steven Schwartzman.



Roy Deitchman



Steven Schwartzman



**EXHIBITS FROM THE ROCKVILLE CORPORATE CENTER  
BOARD OF APPEALS HEARING  
Variance Application APP2007-00876  
JUNE 2, 2007**

1. Resume - Jef Fuller, AIA, Managing Principal and President of DNC Architects
2. Chronology of events excerpted from the prehearing statement document
3. Resume – Dwight S. Taylor, COPT
4. Building footprint overlay
5. Resume – Kevin Johnson, President, JBA
6. A. Buckingham property  
B. Approved NRI/FSD (uniwest) document
7. Aerial of Twinbrook Ardenes property showing forest cover
8. A. Page 1 of Approved NRI/FSD (FTPO#2005-00025) for RCC (COPT) property  
B. Page of Approved NRI/FSD listing of significant trees on the RCC (COPT) property.  
C. FSD Field Investigation Narrative prepared by CNA for Rockville Corporate Center, dated February 22, 2006.
9. A. Sheet L1.01 of the Forest Conservation Plan (FCP) submitted to Planning Staff in June 2006 entitled “Tree replacement planting notes”, with tree buffer area between the RCC (COPT) property and the King Farm property highlighted.  
B. Sheet L1.04 of the FCP submitted to Planning Staff in June 2006 entitled “Tree removal plan” with certain trees highlighted.
10. A. Sheet L1.05 from Forest Conservation Plan (FCP) submitted to the Forestry Division in January 2007 in support of Building Permit Application BLD2007-13010, entitled “Tree removal plan.”  
B. Enlarged portion of sheet L1.05 of FCP highlighting portions of the tree removal plan.
11. Worksheet – Intentionally omitted. Document not admitted into evidence.
12. Case Activity Listing for Building Permit Application BLD2007-13010.
13. A. Proposed Scheme B1 development plan with 8’6” wide parking spaces  
B. Proposed Scheme B2 development plan with 9’0” wide parking spaces
14. Forest Conservation Plan Review for Rockville Corporate Center
15. King Farm K.F. residents petition
16. A. Photo of property bordering K.F.  
B. Photo of property bordering K.F.
17. Power Point Presentation for App2007-00876 (32 pages)
18. Site Plan submitted with Building Permit Application BLD2007-13010
19. Design Standards parking spaces and areas – Section 24-411 of the Rockville City Code and Section 3-401, Chapter 25 of the Laws of Rockville.

## **LISTS OF EXHIBITS**

### **I. Appeals Application APP2007-00876**

1. Application Form
2. Letter from Scott C. Wallace, Linowes and Blocher LLP explaining reason for Appeal, includes
  - 2.A. Exhibit "A" Approval Letter for Use Permit Application U-279-83
  - 2.B. Exhibit "B" Approved Site Plan dated March 7, 1985
  - 3.B. Exhibit "C" Scott Ullery, City Manager's letter date January 7, 2007
  - 4.B. Exhibit "D" Zoning Compliance Letter to Corporate Office Properties, L.P. and Anchor Title Insurance Company date March 22, 2005
3. Letter dated April 4, 2007 from Scott Wallace to Art Chambers
4. Letter dated April 11, 2007 from Scott Wallace to Art Chambers

### **II. Motion to Dismiss from City Attorney's Office**

1. Prepared Motion
  - 1.A. Attachment A – January 2, 2007 letter to Sean Moore from Scott Ullery
  - 2.B. Attachment B – January 9, 2007 e-mail from Kevin J. Johnson to Lise Soukup
  - 3.C. Attachment C – January 12, 2007 letter from Kevin J. Johnson to Elise Cary
  - 3.D. Attachment D – Application for Forest Conservation Plan (FCP) Review – received January 18, 2007
  - 3.E. Attachment E – Forest Conservation Plan Review dated February 26, 2007
  - 3.F. Attachment F – Letter from Susan T. Straus to Geoff Ciniero dated March 16, 2007
  - 3.G. Attachment G – Ordinance 28-04, changing the Text of Sec. 25-193
  - 3.H. Attachment H – Chapter 10.5 Forest and Tree Preservation Ordinance

### **III. Zoning Compliance Letters**

1. September 17, 1997 – Letter from Lisa W. Rother to Mr. Burr Ault
2. July 10, 1998 – Letter from Kathleen A. Mitchell to Stephen J. Orens
3. May 1, 2000 – Letter from Lisa Rother to Jeff Fuller
4. March 22, 2005 – Letter from Scott E. Parker to Corporate Office Properties, L.P. and Anchor Title Insurance Company

### **IV. General Correspondence**

1. Letter dated March 17, 2006 from R. James Wasilak to Sean Moore – status of Approval
2. Letter dated June 19, 2006 from Lise Soukup to Geoff Ciniero - conditional approval of the SWM concept plan

3. Letter, dated October 16, 2006 from Susan Straus to Sean Moore – conditional SWM concept approval
4. Letter, dated November 27, 2006 from Scott Ullery to Sean Moore – confirming the substance of November 21, 2006 telephone conversation
5. Letter dated January 2, 2007 from Scott Ullery to Sean Moore
6. Letter, dated January 12, 2007 from Kevin Johnson to Elise Cary submitting the Forest Stand Delineation application and the fee.
7. Forest Conservation Plan Review dated January 19, 2007 suspending review of the FTP2005-00025
8. Forest Conservation Plan Review dated February 26, 2007, 2007 suspending review of the FTP2005-00025
9. Letter from Scott Wallace to Elise Cary claiming that all further proceeding with respect to the Building Permit are stayed pending action on the Appeal.
10. Letter dated April 5, 2007 from Jim Wasilak to Sean Moore
11. Letter dated April 5, 2007 from Charles Baker to Sean Moore

**V. Memorandum from Sean Moore to Scott Ullery, City Manager**

1. Dated November 9, 2006 – Outlines development options that Corporate Office Properties Trust has studied in an effort to maximize the forested buffer area

**VI. Use Permit U-279-83 – for four office buildings containing a total of 446,000 square feet of gross floor area**

1. Application – submitted June 24, 1983
2. Approval letter dated October 13, 1983
3. Landscape Plan approval letter dated August 9, 1984
4. Time Extension Letter dated November 8, 1984
5. Approved Site Plan dated March 7, 1985
6. Approved Landscape Plan dated August 9, 1984

**VII. Use Permit Amendment USA1983-0279A – for the placement of an emergency generator pad site and a temporary road**

1. Application, submitted July 30, 1999
2. Letter dated October 8, 1999 deleting the road from the application
3. Approval letter dated October 27, 1999
4. As Submitted Site Plan - the approved site plan is not in the file

**VIII. Use Permit Amendment USA1983-0279B – for the placement of a hazardous waste storage building.**

1. Application, submitted May 14, 2001
2. Approval letter dated May 29, 2001
3. Approved Site Plan dated May 31, 2001

4. Approved Landscape Plan dated May 31, 2001

**IX. Use Permit Amendment USA83-0297C – for an enclosed storage area for nitrogen tanks**

1. Application, submitted May 16, 2001
2. Approval Letter dated May 29, 2001
3. Approved Site Plan dated May 30, 2001
4. Approved details for micro bulk tank pad foundation, pad and tank
5. Approved details for landscaping surrounding the enclosure and wall elevations and details

**X. Use Permit Amendment USA1983-0279D – for an entrance plaza in front of 15 West Gude Drive**

1. Application, submitted June 6, 2006
2. Approval Letter dated September 15, 2006
3. Approved Site Plan dated September 15, 2006
4. Approved Landscape Plan dated September 15, 2006

**XI. Use Permit Amendment USA1983-0279E – To adjust building footprints and setbacks, parking layout and number of spaces provided and place above-ground generators and transformers.**

1. Application, submitted June 16, 2006
2. Traffic Impact Analysis, dated June 16, 2006
3. Overall Site Plan
4. Site Plan
5. Utility Plan
6. Existing Conditions Plan
7. Approved Site Plan approved March 7, 1985

## **XII. Pre-Hearing Statement of Applicant, Rockville Corporate Center, LLC**

1. Exhibit 1 - Approval Letter for U-279-83, dated October 13, 1983
2. Exhibit 2 - Letter Dated April 26, 2007 from Dwight Taylor to Arthur Chambers noting expenditures on the property
3. Exhibit 3 - Letter Dated March 22, 2005 from Scott Parker to Corporate Office Properties, L.P. and Anchor Title Insurance Company
4. Exhibit 4 - Transcript of the March 6, 2006 Mayor and Council Meeting, where members of the King Farm community addressed the Mayor and Council
5. Exhibit 5 - Transcript of the August 7, 2006 Mayor and Council Meeting, where members of the King Farm community addressed the Mayor and Council
6. Exhibit 6 - Building Permit BLD2007-13010 Application  
- Building Permit plans are also mentioned as being part of Exhibit "6"
7. Exhibit 7 - Letter dated January 2, 2007, from Scott Ullery to Sean Moore, identifying the issues related to the alternatives and the current Use Permit Amendment
8. Exhibit 8 - Memorandum dated February 26, 2007, suspending review of the Forest Conservation Plan
9. Exhibit 9 - Letter from Charles Baker to Sean Moore, notifying him that the Building Permit cannot be approved - includes copies of the Feb. 26, 2007 memo suspending review of the Forest Conservation Plan and R. James Wasilak's letter to Sean Moore dated April 5, 2007 stating the reasons that the Building Permit cannot be approved
10. Exhibit 10 - Staff Report on Use Permit U-279-83
11. Exhibit 11 - Approved Site Plan, U-279-83, dated March 7, 1985
12. Exhibit 12 - Copies of cards from ISD files for the buildings at 15 and 45 West Gude Drive
13. Exhibit 13 - A copy of a Public Improvement Agreement, filed among the Land Records April 18, 1985

14. Exhibit 14 – “Grant of Storm Water Management Easements and Rights-of-way to the Mayor and Council of Rockville, Maryland” recorded among the Land Records on April 15, 1985
15. Exhibit 15 – A copy of Plat for the property
16. Exhibit 16 – Deed of Easement for slope easements, recorded Dec 15, 1981
17. Exhibit 17 – Public Improvement Agreement for \$280,000.00
18. Exhibit 18 – Deed to the State of Maryland
19. Exhibit 19 – Letter dated September 17, 1997 from Lisa W. Rother to Burr Ault confirming items discussed at a meeting.
20. Exhibit 20 – Letter dated May 1, 2000 from Lisa W. Rother to Jeff Fuller responding to inquiries about forest conservation, building placement, parking spaces and parking setbacks
21. Exhibit 21 – Approved FSD, FTPO2005-00025, dated June 9, 2006
22. Exhibit 22 – February 28, 2006 Traffic and Transportation Commission Meeting agenda with staff report
23. Exhibit 23 – Letter from R. James Wasilak to Sean Moore, dated March 17, 2006 noting the addition of the FTPO since the project was approved
24. Exhibit 24 – Letter from Susan Straus to Geoff Ciniero, dated March 16, 2007 regarding stormwater management
25. Exhibit 25 – Letter from R. James Wasilak to Sean Moore approving Use Permit Amendment USA1983-0279D
26. Exhibit 26 – November 9, 2006 Memorandum from Sean Moore to Scott Ullery outlining the development option previously discussed
27. Exhibit 27 – Perspectives of the building approved in 1983 and the building currently proposed
28. Exhibit 28 –
  - Sheet L0.00 – Index Sheet labeled Forest Conservation Plan and Landscaping Plan
  - Sheet L1.01 – Tree Replacement and Planting Notes
  - Sheet L1.02 – Tree Removal and Replacement Tables



City of Rockville  
111 Maryland Avenue  
Rockville, Maryland  
20850-2364  
www.rockvillemd.gov

Community Planning and  
Development Services  
240-314-8200  
TTY 240-314-8137  
FAX 240-314-8210

Historic Preservation Office  
240-314-8230

Inspection Services Division  
240-314-8240

Long Range Planning  
Division  
240-314-8200

Planning Division  
240-314-8220

Revitalization/Housing Division  
240-314-8200

MAYOR  
Susan R. Hoffmann

COUNCIL  
John B. Britton  
Piotr Gajewski  
Phyllis Marcuccio  
Anne M. Robbins

CITY MANAGER  
Scott Ullery

CITY CLERK  
Claire F. Funkhouser

CITY ATTORNEY  
Paul T. Glasgow

June 13, 2008

Sean Moore  
Rockville Corporate Center, LLC  
c/o COPT Development and Construction  
6711 Columbia Gateway Drive  
Suite 300  
Columbia, Maryland 21046

Re: Use Permit Amendment Application USA1983-0279F,  
15 West Gude Drive, Rockville, Maryland

Dear Mr. Moore:

At its meeting on April 9, 2008, the City of Rockville Planning Commission reviewed and conditionally approved the above mentioned Use Permit Amendment Application. The approval is for the relocation of two of the previously approved buildings, construction of a two level parking deck, the rearrangement of the parking and two above-ground transformers. Approval is subject to the following conditions:

1. Submission, for the approval of the Chief of Planning, of (11) copies of the site plan, revised according to Planning Commission Exhibit "A";
2. Submission, for the approval of the Chief of Planning, of (11) copies of a coordinate Landscape/Forest Conservation Plan; In addition to internal landscaping provided around the site, the following additional planting must be included on the plan:
  - a. That a double row of landscaping be provided between the parking lot on the subject property and the King Farm community; and
  - b. With permission from the King Farm Citizen's Assembly, supplemental planting shall be provided within the FCE on the King Farm property at the northeastern end of the site. The proposed off site landscaping shall be shown on both the FCP and Landscape Plan to be reviewed and approved by the City Forester;
3. Submission, of eleven (11) copies of the approved Signing, Pavement-Marking and Channelization Plan to the Chief of Planning prior to the issuance of Building Permits;
4. Submission, for approval of the Department of Public Works, of the following plans, studies and computations:

- a. Storm drainage study for the site with computations and drainage area map;
  - b. Stormwater management (SWM) plans for the on-site systems;
  - c. Sediment control plans, with existing and proposed contours, for all disturbed areas;
  - d. Public improvements including new site driveways, sidewalks, turn lanes, street trees and lighting, signing and marking for traffic control. Any new or relocated public street lights require DPW approval, and a request and payment by the applicant to PEPCO for service; and
  - e. All detailed engineering plans must be on 24" x 36" mylars, at 1"=30' scale;
5. Post bonds and obtain permits for work within right-of-way from the Department of Public Works and MDSHA, as needed. MD SHA approval must be obtained prior to issuance of DPW permits;
  6. Compliance with all conditions of stormwater management concept plan approval letter dated March 27, 2008. Stormwater management phasing must be consistent with the overall site phasing;
  7. This approval is subject to a Release and Extinguishment of the stormwater management easement at the west end of the site, within the area of the decommissioned stormwater management pond. This release must be approved by the Mayor and Council prior to issuance of DPW permits. Applicant must submit appropriate plans and legal descriptions to Public Works within three months of Planning Commission approval for extinguishment of the easement. A minimum of sixty days is required to process the submittal for Mayor and Council action;
  8. That all structures meet the requirements of the City's construction codes, the Fire and Life Safety Codes, Maryland Building Code for the Handicapped and Federal ADA requirements;
  9. All nonconforming signs shall be removed and any new signs are subject to the necessary permits for all signs from the Division of Inspection Services;
  10. The applicant shall comply with the City's Publicly Accessible Art in Private Development ordinance. Applicant must provide a concept plan for



approval prior to issuance of building permits and fulfill the art requirement prior to issuance of an occupancy permit, or if applicant elects to make a contribution under the ordinance, such contribution shall be paid prior to issuance of building permits;

11. Submission, to the Chief of Planning for the review and approval by the Transportation Division of an on-site lighting plan incorporating the existing site lighting. Review must be completed prior to permit issuance of Building Permits with particular attention being paid to current lighting on the existing buildings facing the King Farm community. Exterior lighting fixtures must be installed so as not to reflect or cause glare into adjacent properties;
12. Construct sidewalks and handicap ramps to connect the West Gude Drive entrance with existing buildings A and B per ADA requirements prior to the first occupancy permit. Study the feasibility of an accessible ramp adjacent to the stair entrance to Building B off the main drop-off area.
13. Trailer truck operation to access loading dock areas shall be limited to non-office hours during weekdays and weekends.
14. Applicant shall design and construct an extension to the left turn lane on West Gude Drive at the main vehicular access driveway prior to the first occupancy permit. The extension length shall be approved per the traffic study. Design plans shall be reviewed and approved by the Department of Public Works.
15. Provide a public improvement easement (PIE) for the construction of a public sidewalk outside the public right-of-way along West Gude Drive between MD 355 and the main site access driveway. The easement shall be approved by the Department of Public Works and recorded in the land records of Montgomery County prior to issuance of Public Works permits.
16. All internal and external traffic control devices (i.e., signs, signals, marking, and devices placed on, over or adjacent to a roadway or pathway to regulate, warn, or guide pedestrians/bicyclists and/or vehicular traffic) shall comply with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). A signing and pavement marking plan for the site frontage and internal roadways shall be submitted to the Department of Public Works and approved by the Chief of Traffic & Transportation before the issuance of a Building Permit.

17. The applicant shall provide long-term (bicycle lockers) storage and short-term (bicycle racks) storage for buildings C and D as shown on the site plan. The number is based on net square footage of the building, and the actual amount will be determined at building permit stage. Both buildings will each provide long-term bicycle spaces at a rate of 2 per 40,000 net square feet and short-term at a rate of 2 per 10,000 net square feet.

A locked bicycle room with racks or a locked cage is required for long-term storage. The long-term storage must be covered, distributed to serve both buildings and be positioned on the site or in an area where the closest point is within 300 feet of a main entrance. An inverted "U" bicycle rack is required for short-term storage. The short-term storage must be distributed to serve both buildings and be within 50 feet of a main entrance. The final locations of the long-term and short-term storage will be approved by DPW and determined at building permit stage.

In addition, showers and clothes storage lockers are required. For every 50,000 gross square feet one shower per gender must be installed, up to a maximum of three showers per gender. Showers must be accessible to all tenants of the building. Clothes storage lockers are required at a rate of one locker per gender for every long-term storage space. The lockers must be installed adjacent to the showers and be accessible to all tenants of the building.

18. Prior to issuance of the first Building Permit, the applicant shall submit a phasing plan for the proposed development and a construction phasing plan to be approved by the Chief of Planning and Department of Public Works. The construction phasing plan shall address vehicular and pedestrian accessibility and circulation, stormwater management and landscaping supporting the level of development, construction and material storage, and a parking plan (including construction workers) to support each phase of construction.
19. A Forestry Permit is required for this project. Conditions for issuance of the Forestry Permit are:
  - a. A Final FCP (FCP) must be submitted and approved by the City Forester.
    - i. Review fee, completed application form, including contact information and checklist items, must be submitted with the Forest Conservation Plan.
    - ii. All proposed and existing utilities and easements must be shown on the FCP.
      1. Street trees and replacement trees cannot be located within the PUE or other utility easements.

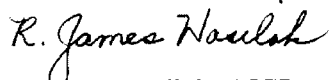
- iii. The Use Permit Amendment Landscape Plan must be included as part of the FCP submission and will be reviewed by Forestry.
  - iv. Exotic and invasive plant removal and control is required within all existing Forest Conservation Easements (FCE) and new Forest Conservation Easement area during the five-year warranty and maintenance period.
    - 1. Significant Replacement trees may be planted within the existing FCE's and the new FCE. All trees 6" DBH and greater within the FCE's shall be shown in order to determine appropriate planting space for the replacement trees.
  - b. An executed Five year Forest and Tree Conservation Maintenance Agreement must be executed.
  - c. A Forest Conservation Easement and Declaration of Covenants for the area of forest being retained in easement shall be signed and recorded within the Land Records of Montgomery County.
  - d. An approved Bond filed with the City Forester.
    - i. Bond shall be based on the amount of significant replacement trees in addition to an estimate for providing exotic and invasive control within the new FCE area and the existing FCE's.
  - e. Payment of the Forestry permit fee.
  - f. An approved Sediment Control Plan.
    - i. The SCP and FCP must be consistent and will be reviewed together.
  - g. All significant replacement planting to occur within the forest save area on site, between the parking lot and King Farm shall be done within six months of the issuance of the Forestry permit.
20. The proposed path location from Rt. 355 through the existing FCE shall take into consideration the location of all existing trees within the FCE.
- a. Tree save, protection and mitigation measures shall be shown on the Final FCP for construction of the path.

In approving the changes to the site, the Planning Commission recommends that the applicant consider implementing shuttle service to the Metro and any other demand management techniques to reduce traffic trips. Section 25-193(d) of the Zoning Ordinance requires that construction or operation must commence within two (2) years of the date of this decision or application approval shall expire. If the applicant can show just cause, a maximum of two (2) time extensions may be granted by the Planning Commission, each not to exceed one year. However, time extensions are not automatically approved, and sufficient detail and justification

Sean Moore  
Rockville Corporate Center, LLC  
June 13, 2008  
Page 6

will be required in order for the Planning Commission to consider granting an extension. Further, according to Section 25-193(e), a Use Permit shall become void if construction on all buildings within a multi-building development has not begun within eight years from the date of issuance of the Use Permit or Use Permit Amendment.

Sincerely,



R. James Wasilak, AICP  
Chief of Planning

cc: Scott Wallace, Linowes and Blocher  
Jef Fuller, DNC Architects  
Kevin Johnson, Johnson Bernat Associates  
Elise Cary, Assistant City Forester  
Susan Straus, Chief Engineer - Environment  
Mark Wessel, Civil Engineer II - Environment  
Nazar Saleh, Civil Engineer II - Transportation  
Lise Soukup, Civil Engineer II - Environment

Sean Moore  
Rockville Corporate Center, LLC  
June 13, 2008  
Page 7

A Building or Occupancy Permit shall not be issued until the above conditions have been met and a copy of the following acknowledgement has been executed by the Applicant and returned to the Planning Division. This action does not constitute approval by any other department of agency having jurisdiction over this development.

I ACKNOWLEDGE RECEIPT OF USE PERMIT AMENDMENT USA1983-0279F AND AGREE TO COMPLY FULLY WITH THE CONDITIONS UPON WHICH APPROVAL WAS GRANTED. I FURTHER ACKNOWLEDGE THAT FAILURE TO COMPLY WITH THESE CONDITIONS MAY CAUSE APPROVAL TO BE REVOKED BY THE CHIEF OF PLANNING.

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(Applicant's Signature)

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(Applicant's Name – Please Print)